

Adapt or Perish: The Time Is Now for Non-Lawyer Ownership of Law Firms

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The time is overdue for lawyers to think deeply about what the legal profession will look like in five and ten years. Unfortunately, the fact of the matter is that our present business model is dead or dying. The facts on the ground are telling us what we already know, but don't want to admit because our profession is afraid of disruptive change. Our collective unwillingness to engage on unavoidable issues such as non-lawyer ownership, the inability of much of the population to afford legal representation, and a rapidly changing landscape in the practice of law have made us our own worst enemy.

Non-Lawyer Ownership of Firms Is Nothing New

Consider the controversial question of non-lawyer ownership of law firms. Many if not most lawyers remain staunchly opposed to the concept. But the fact of the matter is that we already have non-lawyer-owned providers of legal services, in open competition with lawyers. Axiom is a 1,000-person firm partially owned by non-lawyers. Note I did not use the term "law firm" — Axiom does not identify itself as such. Yet self-identity aside, in cyberspace Axiom surely is as much a law firm as any firm in the United States.

Similarly, law offices that are captives of the largest insurance companies in the United States are non-lawyer owned. This type of firm has one client, the insurance company it defends in thousands of automobile accident cases. Just one client—but huge access to working capital. The single client controls how the law firm goes about its business. The client tells its lawyers when to settle and when to go to trial. The professional "independence" of lawyers in these captive firms is largely illusory—they either agree to what their single client wants, or look for "greener" pastures.

The Profession Must Adapt to the Realities of an Internet-Centered Economy

While many in a profession conservative by nature may elect to ignore such long-established models of legal practice controlled by non-lawyers, it is harder to ignore the invasion of web-based legal service providers, such as LegalZoom.com and Rocket Lawyer.com, intent on and equipped to take business from lawyers. They have eaten away at our core business because we traditional lawyers created the opportunity for them to do so. They may not be better than the lawyer down the street, but they are

cheaper and faster than most law firms. Legal service providers on the Internet have made themselves accessible and easy to use—which is what consumers in today’s world want. They, too, are owned by non-lawyers.

Moreover, the Internet revolution in legal service providers is not limited to the commoditized part of the practice. Fairoutcomes.com, completecase.com, squaretrade.com, cybersettle.com, virtual court-house.com and many other dispute resolution web sites are all owned by non-lawyers. And they are making a real effort to get as much of the litigation business as they can.

In the face of this onslaught, lawyers are competing with Internet legal service providers with one hand tied behind their backs. We do not have access to venture capital. We are constrained by a myriad of dated rules and regulations developed over the last 100 years that form the rules of professional conduct. Internet providers have unlimited access to capital markets, and they are not regulated. They are not worrying about access to justice for the poor or the administration of justice. They are not concerned with the state of the judiciary or the election and appointment of judges. They do not support bar associations or offer pro bono services. Their narrow, intense focus is to make as much money as they possibly can.

Big Law is coming apart at the seams because the power has shifted to in-house counsel. Over forty years ago, the profession began to abandon its bread and butter, the individual consumer, in favor of representing large corporations, which were willing to pay ever-increasing hourly rates to support hordes of young associates willing to work obscene hours for large salaries. But many corporations have decided they are not going to continue to pay the large fees charged by these firms without getting an equivalent value. They are looking for the same thing as the individual consumer—as much “bang for their buck” as possible. General Counsel have become very sophisticated consumers, with great incentives from their boards of directors to reduce legal costs in any way possible. They may not be looking to the Internet yet, but they are demanding value for their legal dollar, just like the consumers who turn to the Internet for their wills or leases.

The Profession Is at Risk of Losing the Right to Self-Regulate

We are the last of the self-regulated professions. Both the accounting and the medical professions are now for the most part regulated by governmental agencies. Ask doctors and accountants if they are happy with their new governmental regulators. The fact is, over the years they have lost a significant measure of control of the direction of their profession and their destiny.

We lawyers are still in control of our destiny, but that control can easily slip away if we let it. Disruptive change is occurring all around us, and we are not participating. That is not good stewardship. We act as if we are above it all, or that if we look the other way, it will go away. Guess again. Legal sites on the Internet may come and go, but they are not going away. They are only going to become more robust as they add artificial intelligence to their platforms. Not only will these web sites provide you with forms, and resolve your disputes, but they will help you find the correct solution to your legal problem. Sound familiar? Isn’t that what we lawyers have always done?

We need to be part of the solution. If non-lawyer ownership is not one of the answers, then what is? Saying no to change is not a solution. Relying on our 100-year-old business model is not going to work in today's twenty-first century Internet world.

Starting the Discussion

The following suggestions are meant to start the discussion:

1. Change the regulatory system from one that regulates individual lawyers to one that regulates entities. This change will allow the profession to enlarge the tent to include multi-discipline practices, Internet providers, and other innovative entities that will provide legal services on platforms we can only imagine. Obviously this is a significant structural change that will have to be done in conjunction with a myriad of other regulatory and governmental bodies.
2. Allow multi-discipline practice, in order to permit accountants, financial planners, counselors, and attorneys to form new combined entities to allow one-stop shopping for consumers. All employees and shareholders will have to live up to the high standards of the Rules of Professional Conduct, since we will regulate legal service provider entities.
3. Allow non-lawyer ownership in stages over the next five years. This will allow those bright new, young, tech-savvy attorneys to formulate new forms of law firms that, for example, will have computer programmers and social networking experts as owners.
4. License and regulate paralegals/legal technicians so that they can offer commoditized work to consumers at a reasonable cost, independent of attorneys.
5. Offer a two-year master's degree in law that is not a Juris Doctorate, but in between a paralegal degree and a Juris Doctorate. This degree will enable someone who is interested in a specific area of the law to learn, practice, and concentrate in just that area.
6. Modify the ABA/AALS accreditation requirements for law schools so that they can experiment with different programs and differentiate themselves. One size fits all cannot be the model that law schools must operate under in this century.

Conclusion

The legal profession is an important part of the fabric of a democratic society. We have "been there" in this country and around the world for every important event.

We stand ready to protect the weak and at the same time defend the powerful. When our clients are in trouble, they don't call their computer. They call us. We need to be there for all of those people who will need us in the future. We need to be a strong profession with well-trained attorneys willing to take on the unpopular cause.

Let's begin the discussion. The ideas offered above are not the only ones, and they may not even be the right ones. But we need to start talking.

The legal profession is made up of many of the best and the brightest. We should be able to develop a new structure that will allow us to remain independent, relevant, and self-regulated in the twenty-first century.